



Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert R. Corbin

ARIZONA ATTORNEY GENERAL

May 28, 1986

The Honorable Bill De Long
Arizona State Senator
State Capitol - Senate Wing
Phoenix, Arizona 85007

Re: I86-059 (R86-024)

Dear Senator De Long:

You have asked the proper procedures for removing a member of a county or city planning and zoning board or a city or county board of adjustment.

A.R.S. § 11-803(C) establishes the term of a county planning and zoning commission member at four years; the term of a county board of adjustment member is established by A.R.S. § 11-807(A), also at four years.

A.R.S. § 9-462.06 establishes a city board of adjustment. Neither this section nor the section establishing a city planning commission, A.R.S. § 9-461.02, establishes the term of office for membership on either board. Both state that the term of office shall be as provided by local ordinance.

A.R.S. § 38-295(A) provides in pertinent part:

Every officer whose term is not fixed by law shall hold office at the pleasure of the appointing power.

This statute codifies the common law and has been the law since Arizona was a territory. In Cole v. Territory of Arizona, 5 Ariz. 137, 48 P. 217 (1897), the Arizona Supreme Court considered whether the governor had the power to remove the territorial treasurer and stated:

The Honorable Bill De Long
May 28, 1986
I86-059
Page 2

Paragraph 3049, Rev. St., provides that every officer whose term is not fixed by law holds at the pleasure of the appointing power The power to remove is incident to the power of appointment, unless expressly prohibited by law. This doctrine has become so well settled that it is now the text law of this country This law is absolutely conclusive of the question. It is not contrary to the organic act. That act nowhere prohibits such a law.

Cole v. Territory of Arizona, 5 Ariz. at 141-142, 48 P. at 218 (citation omitted). In State v. Ingalls, 21 Ariz. 411, 414-415, 189 P. 430, 432 (1920) the court stated:

The law does not state nor fix the term or length of time the adjutant general may exercise and enjoy the honors and emoluments of the office. If the statute named the days, months, or years that he might serve, a different question would arise than the one we have before us. The law creating and recognizing the office doubtless took into consideration the close relation that this officer sustains to the Governor, and purposely omitted fixing any term so that the Governor might exercise the power, at his discretion, to make changes in that office.

It is provided in another portion of the statute that -

'Every officer whose term is not fixed by law shall hold at the pleasure of the appointing power.'
Paragraph 159, Civil Code.

The law establishing the county planning and zoning commission, A.R.S. § 11-803(C), and the county board of adjustment, A.R.S. § 11-807(A), sets the terms of membership for both at four years. Accordingly, the terms are set by law

The Honorable Bill De Long
May 28, 1986
I86-059
Page 3

and a member may be removed before the term expires, only for cause. The only statutory^{1/} causes for removal of a public officer are conviction under A.R.S. §§ 38-341 to -345. (§ 38-343) for willful or corrupt misconduct in office, or under A.R.S. §§ 38-501 to -511 (§ 38-510) for a conflict of interest. Upon conviction, the public officer would be ordered removed from office.

The law establishing a city board of adjustment and a city planning board does not set the terms of the members, but delegates that authority to the city to set by ordinance. If a city ordinance sets the term of office then the term would be fixed "by law," and a member may not be removed without cause until the expiration of that term. The same statutory causes cited in the preceding paragraph also would apply. If the ordinance does not set a term of office, then the incumbent could be removed at any time by the appointing authority without cause pursuant to A.R.S. § 38-295.

Sincerely,



BOB CORBIN
Attorney General

BC:DR:sr

^{1/}Recall and impeachment are available under Arizona Constitution, Article VIII.